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10/541,557

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Shlomo Elfanbaum

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5832

44696

7590

01/27/2009

DR. MARK M. FRIEDMAN

C/O BILL POLKINGHORN - DISCOVERY DISPATCH

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EXAMINER

GEBREMICHAEL, BRUK A

ART UNIT

PAPER NUMBER

3715

NOTIFICATION DATE

DELIVERY MODE

01/27/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 10/541,557	<b>Applicant(s)</b> ELFANBAUM, SHLOMO	
	<b>Examiner</b> BRUK A. GEBREMICHAEL	<b>Art Unit</b> 3715	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11/02/2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 18-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 18-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. The following office action is a **Final Office Action** in response to communications received on 11/02/2008. Claims 1-17 have been cancelled. New claims 18-28 are added. Therefore, claims 18-28 are pending in this application.

#### ***Response to Amendment***

2. Applicant has cancelled claims 1-17, and thus the Examiner accordingly withdraws the 35 U.S.C 112, second paragraph rejection set forth in the previous office action.

The Examiner further withdraws the claim objection set forth in the previous office action with regard to claims 4, 6 and 7 as these claims are currently canceled.

#### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

- Claim 23 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 23 recites "said representation of **rating**", in line 2 of this claim. However, there is insufficient antecedent basis for this limitation in the claim.

#### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 3715

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

- Claims 18-20, 22 and 24-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Snyder 4,931,934 in view of Bair 6,108,665.

Regarding claim 18, Snyder discloses the following claimed limitations, a computer-aided method for improving a user's emotional state comprising receiving from the user attributes of emotion perceived as influencing his general emotional state (col.4, lines 29-34), a weighting factor for each of said attributes of emotion representing a degree of influence each of said attributes of emotion bears on his general emotional state (col.4, lines 48-53), receiving from the user an emotion feeling input representing the emotion feeling of the user at a particular moment (col.5, lines 8-15), applying an algorithm to said emotion feeling input so as to generate a happiness-index reflective of said user inputted attributes of emotions and said associated weighting factors (col.5, lines 19-30).

Snyder does not explicitly disclose, providing a recommendation for the improvement of the user's emotional state based on said happiness-index.

However, Bair teaches providing a recommendation for the improvement of the user's emotional state based on said happiness-index (col.10, lines 37-47).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the invention of Snyder in view of Bair by initiating a diagnosis and recommendation plan after collecting the patient's data in

Art Unit: 3715

order to suggest and recommend the most suitable treatment plan to the patient based on the data analysis.

Snyder in view of Bair teaches the claimed limitations as discussed above.

Snyder further discloses,

Regarding claim 19, receiving attribute of emotion includes receiving said attributes of emotion as a written input (col.3, lines 28-34),

Regarding claim 20, receiving attribute of emotion includes receiving said attribute of emotion as a written input selected from a written list of emotional attributes (col.4, lines 29-41),

Regarding claim 22, the happiness-index is expressed in terms of a visual representation of rating enabling comparison to other generated happiness- indexes (col.6, lines 3-17).

Regarding claims 24-26, Snyder in view of Bair teaches the claimed limitations as discussed above.

Bair further teaches, providing a recommendation includes providing said recommendation drawn from a data base containing an emotional profile similar to that of the user (col.2, lines 13-22 and lines 54-60); providing a recommendation includes providing an interactive communications link to a qualified psychological professional who provides said recommendation (col.3, lines 3-10 and col.10, lines 37-47); providing a recommendation includes providing an interactive communications link to a group of individuals that provides support and assistance (see col.1, lines 7-11 and col.3, lines 50-55).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the claimed invention was made to modify the invention of Snyder in view of Bair by incorporating a sufficiently large database in order to evaluate and compare the patient's behavioral problems with the norms and display the treatment goals; and also by communicating with a health care worker such as a psychiatrist via the internet in order to conduct further evaluation of the patient's data and provide the most up-to-date treatment option.

Snyder in view of Bair teaches the claimed limitations as discussed above.  
Snyder further discloses,

Regarding claim 27, receiving updated attributes of emotion and associated weighting factors to be used by said algorithm in future happiness-index calculations (col.5, lines 44-56 and FIG 5),

Regarding claim 28, storing the inputted attributes of emotion, said associated weighting factors, said inputted emotional feeling and said recommendations into a collective emotional-profile data bank for the sake of improving future recommendations (col.5, lines 25-30 and col.6, lines 21-27).

- Claims 21 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Snyder 4,931,934 in view of Bair 6,108,665 and further in view of Shovers 5,696,981.

Regarding claim 21, Snyder in view of Bair teaches the claimed limitations as discussed above.

Art Unit: 3715

Snyder in view of Bair does not explicitly teach, receiving attribute of emotion includes receiving said attribute of emotion as a verbal input.

However, Shovers teaches, receiving attribute of emotion includes receiving said attribute of emotion as a verbal input (col.6, lines 58-65).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the claimed invention was made to modify the invention of Snyder in view of Bair and further in view of Shovers by including a microphone as an input interface in order to allow the user to input data into the system by speaking into the microphone so that the necessary data would be collected more efficiently.

Regarding claim 23, Snyder in view of Bair teaches the claimed limitations as discussed above.

Snyder further discloses, representation of rating is expressed in terms of an visual presentation (col.5, lines 10-19).

Snyder in view of Bair does not explicitly teach, the representation of rating is expressed in terms of an audiovisual presentation

However, Shovers teaches, representation of rating is expressed in terms of an audiovisual presentation (col.6, lines 6-14 and lines 58-65).

Therefore, as already indicated above, it would have been obvious to one of ordinary skill in the art at the time of the claimed invention was made to modify the invention of Snyder in view of Bair and further in view Shovers by including a microphone as an input interface in order to allow the user to input data into the system

Art Unit: 3715

by speaking into the microphone so that the necessary data would be collected more efficiently.

***Response to Arguments.***

5. Applicant's arguments filed on 11/02/2008 have been fully considered but they are not persuasive. In the remarks, Applicant argues that,

(1) it is not clear who is analyzing and printing the reports, it is clear that Glenn is teaching a computer system configured to analysis and chart a person's history to medication administered as treatment to an emotional disorder without providing recommendations regarding future medications . . .

. . . The Applicant has added independent claim 18 which is previous Claim 9 appended to previous Claim 1 so as to claim a computer- aided method for improving a user's emotional state by providing a recommendations for improvement of an emotional state thereby differentiating the current invention from both the personality and emotional modeling systems taught by Shovers and Snyder.

- In response to argument (1), as already indicated in the previous office action with regard to previous claim 9, Glenn clearly teaches a system/method that analyzes patient data and provide the results of the analysis in the form of reports. For example the line, "The data from the patient is analyzed and reports are displayed and printed (step 207). If the patient is part of a research study, data from the physician site can be aggregated with data from other patients and study sites for statistical analysis (step 208)", (Para.0041, lines 22-26) clearly teaches the above fact. For example as recited in the previously presented set of claims, claim 9 recites, "*providing for receipt of*



Art Unit: 3715

*assistance in the form of guidance, advice and assessment from the relationship between the personal database and the advice and guidance pool. . .”*

Thus, the system of Glenn analyzing the patient's data (and also aggregating data from other patients and study sites) and generating a report based on the analysis, is clearly a teaching or a suggestion of the claimed limitation, “*providing for receipt of assistance in the form of guidance, advice and assessment from the relationship between the personal database and the advice and guidance pool*”, since the report is generated based on the assessment of the patient data (personal database) and other patients and study cites (the advice and guidance pool).

The Applicant further argued that it is not clear who is analyzing and printing the reports; however, it is clear from the teaching of Glenn that the report is printed at the physician's office (see FIG 1, label 103). It would have been obvious to one of ordinary skill in the art at the time of the invention was made to recognize the fact that the report would be send to the patient via e-mail if the patient has a computer at home, or the report is provided to the patient at the physician's office, as this requires only a routine skill in the art.

The Applicant has also included a part of a paragraph from disclosure of the current application to highlight the features that distinguishes the current invention from the prior art. However, it should be noted that claim limitations are given the broadest interpretation without importing narrow interpretation from the specification. Therefore, this argument is also not persuasive as it is directed to the specification, but not to the claimed limitations.

Art Unit: 3715

Further, as it has already been indicated in the above section (*Claim Rejections - 35 USC § 103*), the new grounds of rejection established in this final office action addresses the arguments concerning the currently presented claims (newly added claims).

### ***Conclusion***

Applicant's amendment necessitated the new grounds of rejection presented in this final office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bruk A. Gebremichael whose telephone number is (571)270-3079. The examiner can normally be reached on Monday to Friday (7:30AM-5:00PM) ALT. Friday OFF.

Art Unit: 3715

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, THAI XUAN can be reached on (571) 272-7147. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Bruk A Gebremichael/  
Examiner, Art Unit 3715

/Cameron Saadat/

Primary Examiner, Art Unit 3715